



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Steven M. Utter

Attorney Docket No.: 6030-021
(formerly MISTY-52065)

SERIAL NO.: 09/358,280

EXAMINER: Christopher S. Kim

FILING DATE: July 21, 1999

Group Art Unit: 3752

TITLE: PORTABLE MIST COOLING SYSTEM

SUMMARY OF EXAMINER INTERVIEW OF JUNE 22, 2005

On June 22, 2005, the undersigned conducted a telephonic conversation of approximately 30 minutes duration with Examiner Kim regarding application Serial No. 09/358,280. The following is the undersigned's summary of that conversation:

1. The undersigned brought to the Examiner's attention the fact that the Examiner still *has not indicated* whether he granted or denied priority to the original parent application in the present case ("Priority Application"; Serial No. 07/376,380, filed July 6, 1989) for claims 5 and 8 as presented to the Examiner in the Request for Continued Examination of December 19, 2003, and that this information was critical to the undersigned in preparing Applicant's responses to the Examiner's Office Actions. Specifically, the undersigned indicated to the Examiner that it was critical for the undersigned to know whether or not these claims 5 and 8 were granted priority to the parent application, because that would determine whether U.S. Patent No. 4,911,339 to Cushing ("Cushing") cited against these and related claims by the Examiner could be removed as a reference against these and related claims

2. The claims in question read as follows:

Claim 5. A misting apparatus for cooling a local area in the vicinity of a person by evaporative cooling, comprising:
a pressurizable container for supplying water;
means for pressurizing the container;
a water conduit having a proximal and distal end, the proximal end connected to the pressurizable container;

a spray nozzle secured to the distal end of the water conduit and in fluid communication with said water conduit, said spray nozzle delivering an evaporative cooling mist of water in the vicinity of a person for cooling the person when pressurized water is supplied to said spray nozzle; and

a restrictive valve having a closed position and an open position, said valve connected to said water conduit for controlling flow of water to said spray nozzle, whereby pressurization of said pressurizable container forces an uninterrupted spray of water from said pressurizable container out through said spray nozzle on said conduit when said restrictive valve is in said open position.

Claim 8. The misting apparatus of claim 5, wherein said container further comprises means for sealing said inlet for filling the container.

3. The undersigned brought to the Examiner's attention the fact that, in the Office Action of January 9, 2004, the Examiner, in ¶ 3 denied priority to the parent application for claims 7, 9, 10, 18-21, and 23, *but did not indicate the status of priority with respect to claims 5 and 8.*

4. Furthermore, in ¶ 11 of this same Office Action the Examiner, in his "Response to Arguments" also indicated that "Claims 7, 9, 10, 18-21 and 23 have not been granted the benefit of applicant's earlier filing date" while *again omitting any indication of whether or not claims 5 and 8 were accorded priority.*

5. The undersigned brought to the Examiner's attention the fact that, in Applicant's Response of April 9, 2004, *Applicant noted that the Examiner had not indicated whether claims 5 and 8 had been accorded priority*, and stated that, "since the Patent Office has failed to include claims 5 and 8 among the list of claims that have not been granted the benefit of the earlier filing date ..., claims 5 and 8 have been granted such benefit." (Response of April 9, 2004, page 4).

6. In response, the Examiner indicated to the undersigned that, despite this statement, it was possible that the Examiner had missed this and other of Applicant's remarks regarding claims 5 and 8, and that in any case his language omitting any discussion of claims 5 and 8 could be read to mean that those claims were accorded priority.

7. The undersigned then asked the Examiner if this meant that he *had in fact* accorded priority to claims 5 and 8. The Examiner again replied that this language could be read in accordance with this statement.

8. The undersigned noted that he had in fact highlighted the lack of indication of allowance or denial of priority for claims 5 and 8 in the most recent Response. Specifically, in the Response of April 14, 2005, pp. 6-7, Applicant noted that:

From the Examiner's response on page 7 of the Office Action of June 15, 2004 ... it again appears that the Examiner does not dispute this priority claim [to the earliest filed application] as it applies to currently pending independent Claim 5, and Claim 8 which depends therefrom, since neither of these claims are recited in the Examiner's discussion on page 7 of the Office Action. On this basis Applicant assumes that U.S. Patent No. 4,911,339 ("Cushing") has been removed as a prior art reference against Claims 5 and 8.

9. The undersigned also stated to the Examiner that it was difficult – in fact impossible – to adequately draft Responses to the Examiner's rejections when the undersigned was not clear as to the extent of those objections, i.e., whether a) claims 5 and 8 as earlier presented were in fact accorded priority; or b) claims 5 and 8 had not been accorded priority, and if not, for what reason(s) priority had been denied.

10. The undersigned also stated to the Examiner that there was an enormous degree of cost and delay incurred by the inability of Applicant to advance prosecution in light of the Examiner's not providing Applicant with a definitive statement regarding the priority of claims 5 and 8.

11. In response the Examiner suggested that the undersigned ask for clarification in the next Response, i.e., the Response to the Office Action of April 27, 2004.

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Atty Docket: 6030-021 (MISTY-52064)
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CONCLUSION

The undersigned respectfully submits that it is not clear to him why the matter of priority for claims 5 and 8 could not be resolved during the telephonic interview of June 22, 2005, or indeed at any point during the long record of incidents during which Applicant has brought this matter to the Examiner's attention.

However, on the basis of the conversation with Examiner Kim of June 22, 2005, the undersigned now presents to the Examiner a Response to the Office Action of April 27, 2005. This Response has been drafted on the assumption that the Examiner's statement that the omission of any mention of claims 5 and 8 being denied priority could be taken to imply that these claims were accorded priority means that the Examiner in fact intends that these claims are in fact accorded priority.

On this basis Applicant assumes that the Examiner will remove the Cushing reference as it applies to the subject matter of these claims, and will therefore allow these claims, as well as any claims that depend therefrom.

Respectfully submitted,



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